Norbert Stahl (SBN 194091)
nstahl@patentlawservice.com
STAHL LAW FIRM
2 Meadowsweet Lane
San Carlos, California 94070
Telephone: (650) 802-8800
Facsimile: (650) 802-8484

Attorney for Defendant Zone Medical, LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

I-FLOW CORPORATION, a Delaware corporation, Plaintiff, vs. ZONE MEDICAL, LLC, a California limited liability company, Defendant.	Case No. 08-CV-0057 – DMS (NLS) **ZONE'S OPPOSITION TO I-FLOW'S MOTION TO CONSOLIDATE.** Date: April 11, 2008 Time: 1:30 p.m. Place: 940 Front St, San Diego, Court Room 10, 2nd Fl. Judge: Hon. Dana M. Sabraw

Defendant Zone Medical, LLC (“Zone”) hereby submits this Opposition to I-Flow Corporation's (“I-Flow”) Motion to Consolidate.

INTRODUCTION

I-Flow's Motion should be denied as it is improper in view of Zone's prior and currently pending motion to dismiss this case under F.R.C.P. 12(b) ("Motion to Dismiss). I-Flow's Motion merely confirms the accuracy of Zone's contentions in its Motion to Dismiss. I-Flow brought this case in violation of the doctrine of claim splitting under case law from this Court, the 9^{th} Circuit, and the Federal Circuit. For the reasons discussed in Zone's Motion to Dismiss, this case should therefore be dismissed, rendering I-Flow's motion to consolidate moot.

ARGUMENT

A. This Case Should Be Dismissed on the Grounds Discussed in Zone's Motion to Dismiss Currently Before the Court.

Zone does not want to unnecessarily multiply the volume of argument already before the Court. Currently, I-Flow is pursuing two lawsuits in which it alleges infringement of the same right base on the same series of transactions, *i.e.*, manufacture and sales of an infusion pump (Solace pump) in this case ("2008 action") and case number 07-cv-1200-DMS (NLS) ("2007 action"). Currently pending in the 2007 action are a motion to dismiss and a motion to stay. Currently pending in this case, the 2008 action, is Zone's Motion to Dismiss.

I-Flow filed its Motion to Consolidate *after* Zone had already moved to dismiss. In its opposition to Zone's Motion to Dismiss, I-Flow argued that the 2007 action and this case are rather distinct. In its own Motion to Consolidate, I-Flow takes the opposite position by suggesting both case are rather similar. Clearly, this new position of I-Flow is an attempt to revise tactics. After filing this case in violation of the doctrine of claim splitting, I-Flow now hopes to repair the damage it caused.

I-Flow's tactics should be rejected. As discussed in Zone's Motion to Dismiss in this case, I-Flow filed its complaint in this case on January 10, 2008. Four days later, on January 14, 2008, I-Flow filed a Second Amended Complaint in the 2007 action. These dates clearly demonstrate the purpose and goal behind I-Flow's tactics – to waste the resources of a small competitor struggling to build a place in the market for itself.

Zone requests that I-Flow's tactics be rejected and Zone's Motion to Dismiss in this case be granted, thus rendering moot I-Flow's after-the-fact rescue attempt in the form of its Motion to Consolidate.

CONCLUSION

Zone therefore moves for an order denying I-Flow's Motion to Consolidate as moot in view of Zone's Motion to Dismiss in this case.

Respectfully submitted,

DATED: March 28, 2008

STAHL LAW FIRM

By: s/Norbert Stahl
Norbert Stahl, Esq.

Attorney for Defendant Zone Medical, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2008, I electronically filed the foregoing document entitled:

ZONE'S OPPOSITION TO I-FLOW'S MOTION TO CONSOLIDATE

with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

boris.zelkind@kmob.com (Boris Zelkind).

I certify and declare under penalty of perjury under the laws of the Sate of California that the foregoing is true and correct.

Executed on March 28, 2008, at San Carlos, California.

By: s/Norbert Stahl
Norbert Stahl, Esq.

Attorney for Defendant Zone Medical, LLC